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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KS TECH GROUP, INC.,

Plaintiff and Appellant,

v.

CROWN ASSOCIATES REALTY, INC.  
et al.,

Defendants and Respondents.

B139315

(Los Angeles County  
Super. Ct. No. TC008787)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Michael B. Rutberg, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief  
Justice pursuant to art VI, § 6 of the Cal. Const.) Affirmed.

Law Office of Betty S. Chain and Betty S. Chain for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

## INTRODUCTION

In this breach of contract action, we conclude that a party on whose behalf another company purchased water softening equipment can enforce that purchase contract as a third party beneficiary, even though no formal assignment occurred. We also conclude that the evidence supports the trial court's conclusion that the plaintiff and cross-defendant, a construction and engineering company, breached an engineering contract and a construction contract. We affirm the judgment.

## PROCEDURAL HISTORY

In the operative complaint, omitting defendants later dismissed from the case, plaintiff KS Tech Group, Inc. ("KS Tech") alleged four causes of action against CR Textiles. The breach of contract cause of action alleged that KS Tech and CR Textiles entered into a written agreement in which KS Tech agreed to provide construction services, equipment, and material at a Rancho Dominguez property, for which CR Textiles agreed to pay \$85,000. CR Textiles breached the agreement and paid only part of that amount, leaving a balance of \$49,374.89 due KS Tech.

The second cause of action, for account stated, alleged that on October 9, 1996, KS Tech and CR Textiles agreed in writing that CR Textiles owed KS Tech \$49,374.89. CR Textiles had not paid that sum. The complaint alleged a third cause of action for common counts for the same amount, \$49,374.89.

CR Textiles filed a cross-complaint. Again omitting a cross-defendant later dismissed from the case the cross-complaint alleged a breach of contract cause of action

against KS Tech, based on a written agreement, which obligated KS Tech to obtain necessary permits for, and to perform, interior modification work on CR Textiles's plant. CR Textiles made an advance payment of \$25,000 for construction work and \$3,500 for permit processing to KS Tech. The cross-complaint alleged that KS Tech did only five days of work, causing CR Textiles to hire a different contractor to finish the work.

The cross-complaint's cause of action for unjust enrichment alleged that the reasonable value of KS Tech's work performed and services rendered is at most \$14,000. Because KS Tech failed to return the balance of advance payments CR Textiles made, it owed \$14,500 and its failure to pay that sum unjustly enriched KS Tech.

A third cause of action for breach of contract alleged that on behalf of CR Textiles, Woo Bang Trading U.S.A., Inc. ("Woo Bang") entered into a contract with KS Tech under which KS Tech would deliver and install a used water softener tank with a 4.4 million gallon total grain capacity at CS Textiles's plant. KS Tech breached the contract by bringing a water softener tank with only a 2.2 million gallon capacity, forcing CR Textiles to remove the inadequate tank and install a different one.

Fraud and negligent misrepresentation causes of action alleged that KS Tech falsely represented to CR Textiles that the water softener had a 4.4 million gallon total grain capacity, when in fact it had only a 2.2 million gallon grain capacity.

A cause of action for conversion alleged that CR Textiles owned a \$10,000 water tank which KS Tech removed from CR Textiles's premises, converted it to their ownership, and refused to return to CR Textiles.

After a trial by the court, the court issued a tentative decision. On December 23, 1999, the court entered judgment, which found:

1. KS Tech should take nothing by its complaint;
2. CR Textiles had judgment on its cross-complaint against KS Tech for \$29,666.98;
3. CR Textiles was entitled to the return of a water softener unit that KS Tech had removed from its premises, or an additional \$1,000 monetary judgment for its value; and
4. KS Tech was entitled to the return of two blue water softener units it had purchased for CR Textiles, or a \$5,000 money judgment for their value.

KS Tech filed a timely notice of appeal. CR Textiles filed no respondent's brief. The case is submitted pursuant to California Rules of Court, rule 17(b).

### FACTS

Cho is President of CR Textiles. CR Textiles was in the knitting business before expanding into a new business, fabric dyeing. Cho went into the dyeing business to save money on materials by making the fabrics himself. CR Textiles established its fabric dyeing plant at 3104 East Ana Street in July 1996. Woo Bang financed CR Textiles in this new venture. Hong, of Woo Bang, introduced Cho to San Wook Kim, President of KS Tech. Cho lacked experience establishing a fabric dyeing plant, and needed a professional with experience. Cho expected San Wook Kim to provide professional engineering services for setting up machines and for the layout of the dyeing plant.

San Wook Kim held himself out as an expert in building dyeing plants and as someone who was familiar with such plants and their equipment.

*The Engineering Services Contract:* The parties did not sign a written contract for engineering services, but they did reach an oral agreement. On August 2, 1996, the parties agreed to a price of \$11,000 for engineering services to be provided by KS Tech: (1) interior modification for a knitting area; (2) interior modification for dyeing and finishing; and (3) construction supervision. KS Tech received a \$3,000 down payment on this contract.

Cho also paid San Wook Kim to obtain the sewer permit from Los Angeles County. San Wook Kim failed to obtain this permit. Cho later hired Jae Kim to obtain the sewer permit. Jae Kim also drew up a new engineering plan, which he filed with the City and with the Water Department. He charged CR Textiles \$8,000 for that engineering.

*The Construction Contract:* Cho and San Wook Kim negotiated a written contract for construction work to be provided by KS Tech for a price of \$90,000. Both Hong of Woo Bang and Cho signed this contract. KS Tech received a \$22,500 down payment from CR Textiles and began work. When Cho entered into the construction contract with KS Tech in August 1996, he expected KS Tech to start the job in August and complete it in October of 1996.

The evidence conflicted concerning how much work KS Tech performed on the construction contract. Cho, however, testified that two KS Tech employees worked only

one and a half days, laying four pipelines. Then no further work occurred. Cho called KS Tech to find out why its employees did not return to do more work. He was told they were busy elsewhere setting up dyeing plants and could not come to CR Textiles. KS Tech did not complete that work.

San Wook Kim was in Korea. When he returned three weeks later, Cho went to Kim and asked what was going on with the project at CR Textiles's plant. Kim asked for money before he would continue working on it. Cho asked: "What have you done to deserve more payment after showing up only two days?" Kim insisted they would continue to work only if Cho paid more money. Kim then suddenly asked Cho if he had a softener ready. Cho answered, "What softener?"

Cho testified that he terminated the contract with KS Tech because the work did not progress. When he saw the work was not underway, he visited KS Tech three times and made about 30 phone calls. Cho saw Kim, president of KS Tech, visit the CR Textiles premises only once between August and early October 1996. San Wook Kim also told Cho that KS Tech was busy doing other jobs.

CR Textiles initially hired Jae Kim, President of City Property Maintenance, to do electrical work at the new dyeing plant. The normal construction sequence is to put in piping first, and electrical later. Jae Kim's electrical work could not proceed because no pipes had yet been installed.

By October 1996, after terminating KS Tech from the construction contract, Cho hired Jae Kim to complete work called for in the construction contract, which included

piping and plumbing, installing dyeing machines, and applying for county sewer and plumbing permits. Jae Kim helped to lay out CR Textiles's floor plan and decide where to locate machines. Jae Kim obtained the county sewer permit, and installed pipelines for the CR Textiles plant. A small amount of piping work, consisting of four pipes hanging on a rack and on the floor, had been completed when Jae Kim started, but Jae Kim testified that he had to re-do the welding on the pipes and that he began the plumbing work from scratch. Jae Kim discovered that no inspection had occurred and that KS Tech had pulled no permits for piping and plumbing work. Jae Kim obtained the permit. Jae Kim began work in early October 1996. He finished piping installation by mid-November. He estimated he did a "busy month's wor[th]" of work on the piping, including weekends.

CR Textiles paid Jae Kim a contract price of \$65,000 for his pipe and machine installation.

*The Water Softening Equipment:* A third dispute between the parties arose from a purchase order contract for a water softener to be used at the CR Textiles plant. Before they had contracted for the construction work, Cho showed San Wook Kim the plant site, and a water softener located there. San Wook Kim said nothing about needing a new water softener, and said what Cho already had was adequate. Only several weeks after they met did San Wook Kim tell Cho for the first time that he needed a new water softener. Cho testified that Kim said he knew of a unit elsewhere that he could recommend. Cho asked if CR Textiles could use the water softener it already had. Kim

answered “no.” This angered Cho, who had an argument with Kim. Even though the construction work was not going well and he was angry at Kim, Cho decided to buy the water softener San Wook Kim recommended.

Woo Bang, which was financing CR Textiles, paid for the used water softener that San Wook Kim had located at Sung Do International, which wanted to sell it. KS Tech produced a purchase order, plaintiff’s Exhibit 5, showing that Woo Bang was to pay KS Tech \$7,500. KS Tech would then pay Sung Do International by crediting the amount Sung Do International owed KS Tech for services rendered.

The water softener KS Tech delivered proved to be more than 15 years old. Then Kim told Cho he needed a softener with a 4,000,000-gallon capacity. Cho did not think the used water softener was that large, and had the Culligan company check it. After Culligan checked the water softener, Cho told Kim the used softener was no good and asked him to take it back. The tank capacity was 2,000,000 gallons, far under the required 4-million-gallon capacity. Don Anderle, of the Culligan Company, testified that he inspected the used water softeners and calculated their capacity as 1.6 million grains. According to the amount of water CR Textiles told him it needed and the hardness of the water supply to its plant, Anderle calculated that they needed a capacity of 4.8 million grains a day.

In August 1996, KS Tech had said the water softener CR Textiles already had at its plant was adequate. Therefore Cho did not order water softener equipment at that time. Cho did not consult other engineers, because KS Tech told him his water softening



equipment was adequate for the dyeing operation. Cho finally got the water softened during October 1996. Jae Kim's company also connected the water softener system at CR Textiles. The contract included that work. Cho stated that if he had water softening in August 1996 instead of October 1996, construction of his dyeing facility would have been completed by October.

San Wook Kim testified that he learned CR Textiles had a problem with the used water softener, and asked CR Textiles to return it. CR Textiles failed to do so. KS Tech therefore retained the water softener which it had removed from CR Textiles's plant.

The "discussion" contains further facts necessary to resolve issues on appeal.

## ISSUES

KS Tech claims on appeal that:

1. The trial court erroneously awarded damages to CR Textiles on KS Tech's agreement to provide a used water softener because the agreement was with Woo Bang and there was no evidence of an assignment from Woo Bang to CR Textiles;
2. The trial court erroneously awarded damages for costs of operation of a new business which had no history of operations;
3. The evidence did not support an award of unjust enrichment damages to CR Textiles;
4. The trial court erroneously failed to award KS Tech damages sufficient to cover items taken by CR Textiles;
5. The trial court erroneously failed to award KS Tech contract damages; and

6. The trial court erroneously failed to award KS Tech damages for the cost of the used water softener.

## DISCUSSION

### 1. *CR Textiles's Breach of Contract Recovery Does Not Require an Assignment of Woo Bang's Rights Under the Water Softener Purchase Contract*

KS Tech's first claim on appeal challenges the trial court's finding in favor of CR Textiles on the cause of action in its cross-complaint for breach of a contract in which KS Tech agreed to deliver and install a 4.4 million-gallon capacity used water tank in CR Textiles's plant. The cross-complaint alleged: "Woo Bang has duly assigned its rights under the contract to cross-complainant [CR Textiles]."

An October 8, 1996, purchase order produced by Woo Bang authorized purchase of used water softeners for \$7,500, for delivery to CR Knitting.

The trial court's statement of decision stated that KS Tech breached its water softener agreement with CR Textiles by supplying a used water softener that did not have the required capacity to service CR Textiles's business as represented by KS Tech.

#### a. *CR Textiles Can Enforce the Contract as a Third Party Beneficiary*

KS Tech asserts that no evidence shows that Woo Bang assigned its rights under the purchase order with KS Tech for the water softener, that no witnesses testified that an assignment occurred, and there was a complete failure of proof that Woo Bang assigned its rights to CR Textiles.

It appears to be true that no evidence supports the allegation in the cross-complaint that Woo Bang assigned its contract rights to CR Textiles. Nonetheless CR Textiles is the third-party beneficiary of the contract between Woo Bang and KS Tech. “A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.” (Civ. Code, § 1559.) Although Woo Bang’s purchase order identified itself as the buyer and KS Tech as the vendor, it ordered delivery of the used water softener to “CR Kintting at Rancho Donimzues.” (*Sic.*) KS Tech knew Woo Bang financed CR Textiles’s expansion of its knitting business into a dyeing plant. Kim, President of KS Tech, testified that he knew that the used water softener Woo Bang asked him to locate would be delivered to and installed in CR Textiles’s dyeing plant. Woo Bang asked Kim to locate a used water softener suitable for use in CR Textiles’s plant, where KS Tech’s engineering and plumbing work was underway.

Even if the purchase order contract had not specifically stated that the water softener was to be delivered to the third party beneficiary, the facts surrounding the transaction make it clear that Woo Bang and KS Tech understood the water softener purchase contract was for the benefit of CR Textiles. (*Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 351; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1064.)

Given the parties’ intention that the contract benefit CR Textiles, that third party had the right to enforce it without a formal assignment. We find no error.

b. *CR Textiles Can Recover Damages for Its Economic Loss*

KS Tech next argues that assuming CR Textiles was the assignee of Woo Bang's rights under the water softener purchase contract, CR Textiles could only enforce Woo Bang's rights and remedies under that contract. KS Tech thus claims that the trial court erroneously admitted evidence of, and erroneously awarded, damages sustained by CR Textiles.

We have concluded, however, that the breach of contract damages the trial court awarded do not stem from an assignment of Woo Bang's rights to CR Textiles. Instead CR Textiles can enforce the contract as a third party beneficiary. Therefore CR Textiles can recover damages for its own economic loss caused by KS Tech's breach.

2. *The Evidence Justifies Damages for CR Textiles's Increased Expenses*

KS Tech claims that a damage award to CR Textiles based on lost profits is speculative because CR Textiles was a new business with no history of operations. KS Tech cites the prohibition against an award of damages which are uncertain in Civil Code section 3301, which states: "No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin."

The trial court heard evidence that because CR Textiles did not have a functioning water softener, it had to send fabric for dyeing to other businesses. During October and November 1996, CR Textiles paid \$42,917.75 to other business for fabric dyeing. Cho testified that having his own plant dye fabric cost 60 percent of what it cost to have other businesses do that dyeing work. Based on this evidence, the trial court awarded damages

of \$17,167.10, which is 40 percent of the \$42,917.75 CR Textiles paid to other businesses for fabric dyeing.

KS Tech argues that because CR Textiles's dyeing business was a new operation, this evidence was too uncertain to support recovery of lost profits under Civil Code section 3301.

The evidence that KS Tech challenges does not involve CR Textiles's lost profits. Instead it is evidence of higher expenses. Because CR Textiles did not have a functioning water softener of adequate capacity, its dyeing cost increased by 40 percent. CR Textiles does not have to have made profits to have recovered damages because of KS Tech's breach; Civil Code section 3300 requires only a showing of "detriment" proximately caused by the breach of an obligation arising from contract.<sup>1</sup> The statute does not make lost profits the exclusive measure of breach of contract damages. "Detriment" includes the higher costs caused by KS Tech's breach.

Moreover, a court can award damages for lost profits in an "unestablished business" if such damages can be calculated with reasonable certainty. (*S. Jon Kreedman & Co. v. Meyers Bros. Parking-Western Corp.* (1976) 58 Cal.App.3d 173, 184-185.) The test is whether, in an "unestablished" business, sufficient operating experience exists to

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<sup>1</sup> Civil Code section 3300 states: "For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom."

permit a reasonable estimate of probable income and expense. (*Maggio, Inc. v. United Farm Workers* (1991) 227 Cal.App.3d 847, 869.)

We reiterate that this item of damages compensates higher expenses, not lost profits. CR Textiles provided documentary evidence of amounts it paid for outside dyeing work, and Cho testified that those costs would have been less but for KS Tech's breach. This evidence of higher costs has enough certainty to justify this damage award. We find no error.

### *3. No Error Arises From the Trial Court's Findings as to Unjust Enrichment*

KS Tech claims that the evidence does not support the trial court's conclusion that KS Tech was unjustly enriched by \$3,000 on the engineering contract and by \$12,500 on the construction contract.

A claim for unjust enrichment requires that the defendant received, and unjustly retained, a benefit at another's expense. (*Lectrodryer v. SeoulBank* (2000) 77 Cal.App.4th 723, 726.) A benefit means any type of advantage. It can be conferred when one adds to another's property or saves the other from expense or loss. For a benefit to be conferred, it is not essential that the party seeking restitution paid money directly to the recipient. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1278.) Moreover, the person receiving the benefit must make restitution only if, as between the two people, circumstances make it unjust for the person to retain it. (*First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1663.)

a. *The Engineering Contract*

The trial court found, first, that KS Tech was unjustly enriched by \$3,000 which CR Textiles paid KS Tech for engineering and permits, because KS failed to obtain the necessary permits. KS Tech argues that this conclusion reflects the trial court's finding that KS Tech did nothing on the engineering contract, and that the evidence does not support this conclusion.

Kim, President of KS Tech, testified that KS Tech received a \$3,000 down payment on the contract. There were no other payments.

Although it was not signed by Cho of CR Textiles, Kim referred to a written contract in describing work KS Tech completed and did not complete. Kim testified that under Task One, KS Tech finished preparing a layout drawing and detail, which cost \$700, but did not finish the electrical distribution plan (\$1,500) or the "permit process" (\$300). In Task Two, KS Tech completed "equipment layout plan [and] industrial waste flow scheme" (\$2,000), structural modification (\$500), and 80 percent of "mechanical process design" (80 percent of \$3,000 = \$2,400). Kim testified that KS Tech did not complete "electrical distribution plan." It is unclear whether KS Tech did or did not complete "permit process" under Task Two. Kim testified that KS Tech submitted permit applications to Los Angeles County.

CR Textiles's witnesses offered different testimony. Cho, President of CR Textiles, testified that he asked Kim to obtain the sewer permit from Los Angeles County, but Kim failed to obtain this permit and Cho eventually hired someone else to

obtain the sewer permit. Two KS Tech employees came on two days, laying four pipelines.

Jae Kim performed work for CR Textiles at its dyeing plant beginning in June of 1996. Jae Kim helped do the layout for placement of machines, studied the electrical work, and participated in obtaining the sewer and plumbing permits. Jae Kim actually obtained the sewer permit from Los Angeles County, and installed pipelines for the CR Textiles plant. Jae Kim also drew up a new engineering plan and filed it with the City and the Water Department. He charged CR Textiles \$8,000 for that engineering.

The trial court therefore heard conflicting testimony about whether CR Textiles received anything of value for its \$3,000 payment to KS Tech. The trial court resolved the conflict in the evidence in favor of CR Textiles. Substantial evidence, in the form of testimony by Cho and Jae Kim, support the conclusion that KS Tech did not obtain permits, did an insignificant amount of piping work, much of which had to be re-done, and that Jae Kim had to draw up a new engineering plan which he filed with the City and the Water Department and for which he charged CR Textiles separately. Given KS Tech's failure to complete the work, it would be unjust for it to retain the \$3,000 payment. We find no error in this portion of the judgment.

b. *The Construction Contract*

The trial court also found that KS Tech was unjustly enriched by \$12,500, the amount CR Textiles paid to KS Tech (\$22,500) over and above the value of work KS Tech performed under the pipe installation contract. KS Tech argues that the evidence



does not support this finding. The issue is whether KS Tech can show that work it did in partial performance of the construction contract was worth \$22,500.

Hong of Woo Bang and Cho of CR Textiles signed the August 16, 1996, construction contract, which had a price of \$90,000. KS Tech received a \$22,500 down payment from CR Textiles.

KS Tech argues that its work was interrupted because the dyeing machines had not arrived, and KS Tech was then terminated. Chang Ho Seo, a KS Tech foreman, testified that he began working at the CR Textiles plant around August 15 to August 20, 1996. He testified that six-inch and four-inch main pipes were done, supported by a beam, and “fixating of the structure” was done. KS Tech employees worked at CR Textiles’s site for approximately six weeks. The dyeing machines had not arrived, so KS Tech employees could not connect them to the main pipe. The boiler had arrived, but was not hooked up. Seo testified that a KS Tech manager told him that because the water softener had not arrived, they had to stop work. When Seo returned two days later, another contractor was working on the job.

Cho, President of CR Textiles, testified differently. Cho testified that KS Tech started laying out pipelines the day after Cho made the down payment. Two employees of Kim/KS Tech worked one and a half days, laying four pipelines. After that, they did not show up. Cho called to find out why they did not return to do more work, and was told they were busy elsewhere setting up dyeing plants and could not come to CR Textiles. KS Tech/Kim did not complete that work.

Jae Kim corroborated this testimony. He installed pipelines for the CR Textiles plant. Jae Kim testified that he started the piping work “from the scratch.” “A little bit” of the piping was installed before he started work, but even as to that piping, he had to redo the welding. Two or three pipes had been placed on the floor, but had not been installed. Jae Kim’s work included installing and connecting piping to the equipment. Jae Kim began work in early October 1996. He finished the piping installation by mid-November. He estimated he did a “busy month’s wor[th]” of work on the piping, including weekends.

Although KS Tech relies on its October 24, 1996 invoice, claiming that it had incurred \$31,803.43 in total costs, the trial court was not required to accept KS Tech’s own valuation. It could rely on the testimony by Cho and Jae Kim that KS Tech performed very little work and left very little material on the site.

This evidence supports the trial court’s \$10,000 valuation of KS Tech’s work on the construction contract, and the court’s finding that KS Tech would be unjustly enriched if it were to retain the additional \$12,500 that CR Textiles paid KS Tech at the beginning of the contract.

*4. KS Tech Has Not Shown Error Arising From the Trial Court’s Failure to Award Damages for Materials and Equipment*

KS Tech claims on appeal that the trial court erroneously failed to rule on its third cause of action for common count for the value of work, labor, services, and materials

provided. KS Tech argues that CR Textiles misappropriated tools, materials, supplies, and equipment KS Tech left behind on its premises.

The trial court's tentative decision found that KS Tech failed to prove the value of items described in Exhibit 4, KS Tech's October 24, 1996, invoice. KS Tech cites testimony by Chang Ho Seo and of San Wook Kim concerning items on another exhibit, Exhibit 14, purportedly listing tools and equipment KS Tech left at the CR Textiles site. Exhibit 14, however, is not in the record on appeal. The testimony of Kim and Seo includes no statements of the monetary value of tools and materials.

Jae Kim also testified as to items listed on Exhibit 14. He testified that he used none of the parts listed on Exhibit 14, and had to purchase materials to complete the piping job at CR Textiles. Before he took over the job, Jae Kim saw KS Tech's materials at the site while KS Tech was still working. Jae Kim stated that after KS Tech was no longer at work on the CR Textiles site, KS Tech took back most of its materials, with the exception of a few "channels" and "welding rods."

The trier of fact is not required to accept opinion testimony of any witness as to value. (*San Gabriel Valley Water Co. v. City of Montebello* (1978) 84 Cal.App.3d 757, 765.) As the trier of fact, the trial court could believe Jae Kim's testimony that KS Tech took back most of its materials, and could disbelieve the KS Tech's valuations of those materials on Exhibit 14. (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243, overruled on other grounds, *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 287-291; *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 409.)

We find no basis for reversing this part of the judgment.

*5. The Trial Court Did Not Erroneously Fail to Award Contract Damages*

KS Tech claims on appeal that the trial court erroneously failed to award it contract damages. Although KS Tech claims it performed substantial work on the construction contract and invoiced \$31,803.43, the trial court concluded that KS Tech failed to perform its contractual obligations within a reasonable time, which entitled CR Textiles to terminate the contract. Substantial evidence supports the trial court's finding that KS Tech performed only a small portion of the services the pipe installation contract obligated it to perform. We find no error.

*6. KS Tech Has Not Shown Error Arising From the Disposition of the Used Water Softener Equipment*

KS Tech claims that the trial court erroneously failed to award KS Tech damages for the cost of the used water softener.

KS Tech claims it was not proven at trial that the used water softener provided by KS Tech was under capacity for CR Textiles's needs. Anderle, however, of the Culligan Company, testified that his proposal for the size of the water softener, based on what CR Textiles said it needed and the hardness of the tap water supply to the building, required a capacity of 4.8 million grains a day. Anderle inspected and measured the two existing used tanks on the CR Textiles site. He concluded that with some work they could be used. After measuring their tanks, Anderle calculated the normal resin capacity as 45 cubic feet, or 1,350,000 grains. Anderle testified that the maximum capacity of the tanks

was 1.6 million grains. This constitutes substantial evidence that the water softener provided by KS Tech was under capacity for CR Textiles's needs.

KS Tech claims CR Textiles presented no documentation showing rejection of the used water softener after KS Tech delivered it. Cho, however, testified that after the Culligan representative checked the water softener, Cho called Kim and told him the used softener was no good and was under capacity, and asked him to take it back. While it is not "documentation," an oral request provides evidence that CR Textiles communicated its rejection of the used water softener to KS Tech.

KS Tech nonetheless argues that CR Textiles accepted the water softener and is responsible for its cost under KS Tech's common count cause of action. The judgment stated that KS Tech was entitled to the return of two blue water softener units it purchased for CR Textiles. The judgment stated: "If Defendant/Cross-complainant CR Textiles fails to return the said water soft[e]ner units within 10 days from the written request of Plaintiff/Cross-Defendant, Plaintiff/Cross-Defendant KS Tech shall have credit toward the payment of the monetary judgment in favor of Defendant/Cross-complainant herein in the amount of \$5,000 for the equivalent value of the two water soft[e]ner units." The trial court derived this \$5,000 value from Exhibit 14, which is not in the record. The trial court was entitled to rely on the value stated in Exhibit 14, which KS Tech provided. We find no basis for reversing or modifying the judgment.

DISPOSITION

The judgment is affirmed. Costs on appeal awarded to respondent CR Textiles.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.